

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOSE COLON,	:	
Petitioner,	:	
	:	
v.	:	Civil Action
	:	No. 16-4596
JOHN WETZEL and	:	
THE ATTORNEY GENERAL OF THE	:	
STATE OF PENNSYLVANIA,	:	
Respondents.	:	

ORDER

This 10th day of July, 2018, it is hereby **ORDERED** that, pursuant to 28 U.S.C. § 636(b)(1)(C), the Report and Recommendation (“R & R”) issued by the Honorable Henry S. Perkin (ECF No. 7) is adopted. Jose Colon’s Petition for the Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254 (ECF No. 1) is **DISMISSED**, with prejudice and without issuance of a certificate of appealability.

Even setting aside the issue of whether Petitioner’s brief to the Pennsylvania Superior Court substantially complied with Pennsylvania Rule of Appellate Procedure 2119(a) pursuant to *Rolan v. Coleman*, 680 F.3d 311 (3d Cir. 2012), he had ample opportunity to raise the basis for his ineffective assistance claim before and at trial but failed to do so. The Pennsylvania Superior Court found that such failure constituted waiver under 42 Pa. Cons. Stat. § 9544(b). Since that is an independent and adequate state-law ground, *see Boyd v. Walmart*, 579 F.3d 330, 369 (3d Cir. 2009), that claim, his only, is procedurally defaulted, and the Petition is denied accordingly.

/s/ Gerald Austin McHugh
United States District Judge